Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C.

In the Matter of	)	
	)	
Calling Party Pays Service Offering	)	WT Docket No. 97-207
in the Commercial Mobile Radio Services	)	

DECLARATORY RULING
AND
NOTICE OF PROPOSED RULEMAKING

Adopted: June 10, 1999 **Released: July 7, 1999**

By the Commission: Commissioner Ness issuing a separate statement; Commissioner Furchtgott-Roth concurring in part, dissenting in part, and issuing a separate statement.

Comment Date: August 18, 1999
Reply Comment Date: September 8, 1999

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I. INTRODUCTION

1. In this proceeding, we are seeking to remove regulatory obstacles to the offering to consumers of Calling Party Pays (CPP) services by Commercial Mobile Radio Services (CMRS) providers. Based on experience overseas and the substantial interest of several CMRS providers in offering CPP, we believe the potential exists in the U.S. for the wider availability of CPP offerings to benefit the development of local competition and to provide an important new alternative to consumers who have not previously used CMRS extensively. Our goal in this proceeding is to help ensure that the success or failure of CPP offerings to reach this potential reflects the commercial judgments of service providers and the informed choices of consumers, both wireless and wireline, rather than unnecessary regulatory or legal obstacles and uncertainties.

2. Today in the United States, the presubscribed customer of a CMRS provider — "the called party" — generally pays all charges associated with incoming calls.[1] Under CPP, a CMRS provider makes available to its subscribers an offering whereby the party placing the call to a CMRS subscriber pays at least some of the charges associated with terminating the call, including most prominently charges for the CMRS airtime. For purposes of this Declaratory Ruling and Notice of Proposed Rulemaking (Notice), "CPP" refers to the CMRS service offering described in this paragraph. While CPP is widely available abroad, it is offered on only a very limited basis by some CMRS carriers in a few areas in the United States.

3. In this Notice, we propose solutions to obstacles that may be impeding the ability of carriers interested in offering CPP from doing so. CPP holds the potential for making mobile wireless services more attractive to large numbers of customers who do not subscribe today, and spurring the acceptance and development of services offered by mobile wireless telecommunications providers as competitive alternatives to the services of local exchange carriers (LECs). There is significant evidence that CPP would help encourage CMRS subscribers to leave their handsets on and available to receive incoming calls because they would not be incurring as high a cost for receiving calls on a usage-sensitive basis. This increases the use of mobile wireless services, and provides certain benefits to both calling parties, who otherwise would not be able to complete calls to CMRS subscribers who keep their phones off, and CMRS subscribers, who would no longer have an economic incentive to avoid or minimize the acceptance of calls. These benefits may be especially significant for price-conscious customers who find that the flat-rate plans that come with large numbers of minutes included are too expensive. CPP would also be beneficial to those consumers

[1] Although our discussion focuses primarily on CPP in the context of two-way mobile telephony, we recognize that CPP is also an option offered by certain paging carriers, which is often referred to as Paging Party Pays, or PPP. We encourage paging carriers to provide comments on all areas of our proposals that may present special challenges when applied to paging services.

concerned with the ability to control their monthly telecommunications expenses. Thus, CPP holds the potential for making mobile wireless services more effectively available to large numbers of customers who do not subscribe today or who strictly limit their usage, and to spur further competition by offering a different service option that may be particularly attractive to low-income, and low-volume and mid-volume consumers.

4. If CMRS subscribers do not have to pay for incoming calls, CPP may spur the development and acceptance of services offered by mobile wireless telecommunications providers as competitive alternatives to the services of LECs. Certain CMRS providers believe that CPP can have a significant positive impact on the offering of mobile wireless services in this country, and are asking the Commission to take those steps within its authority to help facilitate their offering of CPP as an additional service choice for consumers.

II. BACKGROUND AND EXECUTIVE SUMMARY

5. Pursuant to the mandates of the 1993 Budget Reconciliation Act (1993 Budget Act)[2] and the 1996 Telecommunications Act (Telecom Act of 1996)[3], this Commission is committed to removing obstacles to the growth of competition of all telecommunications services, including CMRS. In a *Notice of Inquiry* issued in late 1997, the Commission sought information on several issues concerning CPP, including how the calling party should be informed of the charges that will be incurred, and the technical and contractual requirements that are needed for implementation of the service option.[4] The *Notice of Inquiry* also asked whether there are reasons to initiate actions to facilitate the availability of CPP as a means to foster competition in the local exchange market, *i.e.*, whether wider availability would enable CMRS providers to compete more readily with LEC wireline services — and as an option to increase consumer choices for local phone service.[5] The Commission received comments in response to the *Notice of Inquiry*[6] and received additional information in response to a Petition

[2] Omnibus Budget Reconciliation Act of 1993, Pub. L. No. 103-66, 107 Stat. 312 (1993).

[3] Telecommunications Act of 1996, Pub. L. No. 104-104, 110 Stat. 56 (1996).

[4] Calling Party Pays Service Option in the Commercial Mobile Radio Services, WT Docket No. 97-207, Notice of Inquiry, 12 FCC Rcd 17693 (1997) (*Notice of Inquiry* or *NOI*).

[5] *Id.* at 17693-94, 17695 (paras. 1, 5).

[6] In response to the *Notice of Inquiry*, we received 30 comments and 21 reply comments. A list of pleadings, together with short title references used to cite commenting parties, is contained in Appendix A.

for Expedited Consideration subsequently filed by CTIA.[7] In December, 1998, the CTIA Board of Directors sent a letter to Chairman Kennard affirming the consensus reached by principal CMRS providers to support CPP as an additional service choice for consumers.[8]

6. After considering the record received in response to both the *Notice of Inquiry* and the *CTIA Petition*, we conclude that it is appropriate for us to continue this proceeding to address a number of issues that may be impeding the ability of carriers that are interested in providing CPP offerings to consumers in the United States from doing so. Specifically, we are issuing this Notice to help facilitate the wider availability of CPP, and to consider possible actions this Commission could take to address several key issues associated with the offering of CPP service, including calling party notification and billing and collection. Specifically, we take the following actions.

7. Because we find that there is some uncertainty about the regulatory status of CPP, we issue a Declaratory Ruling clarifying that service offered with a CPP option, as defined above, still qualifies as CMRS service. In the Notice we consider important calling party notification issues. First, we consider a uniform notification standard to protect calling parties by providing them with sufficient information to make an informed decision before completing a CPP call to a wireless subscriber and incurring charges. We also ask how we may work cooperatively with the states to develop such a notification system. We also seek comment on possible additional measures. Second, we discuss and seek comment on whether the proposed notification is sufficient to create an "implied-in-fact" contract between the caller and the CMRS carrier. Third, we discuss whether there is any need for Commission action to protect callers from excessive rates for CPP calls. Fourth, we discuss how CMRS providers may bill and collect from the calling party for calls to CPP subscribers, including LEC billing and collection. We also seek comment at various points on issues relating to the accessibility of CPP offerings to people with disabilities, including Telecommunications Relay Service (TRS) and text telephone (TTY) users.

[7] Petition for Expedited Consideration of the Cellular Telecommunications Industry Association, WT Docket No. 97-207, Feb. 23, 1998 (*CTIA Petition*). We received 21 comments and 10 reply comments in response to the CTIA Petition. *See* Appendix A.

[8] Letter from CTIA Board of Directors to W. Kennard, Chairman, FCC (Dec. 16, 1998) (*CTIA Letter, Dec. 16, 1998*).

III. DECLARATORY RULING

A. Background/Introduction

8. We first address the regulatory status of CPP. The *Notice of Inquiry* specifically sought comment on the status of CPP under Section 332 of the Communications Act.[9] Many parties regard the question as a key threshold issue. For instance, Bell Atlantic Mobile, Inc. (BAM) and Bell Atlantic recently submitted two *ex parte* letters requesting that the Wireless Telecommunications Bureau (WTB), among other things, issue a declaratory ruling that CPP qualifies as a CMRS offering.[10] BAM states its intent to roll out a CPP offering in one or more of its East Coast markets in the immediate future, and seeks greater certainty regarding the regulatory status of CPP. In this Declaratory Ruling we clarify that CPP offerings, as defined above, qualify as CMRS service under the Communications Act and thus would fall under the regulatory structure set out in Section 332(c)(3) of the Act.[11] Therefore, providers of CPP would be treated as common carriers, and state regulation of rates and entry for CPP would generally be preempted. We seek comment separately in the Notice of Proposing Rulemaking on the application of that structure to various issues that have arisen regarding CPP offerings.

B. Positions of the Parties

9. The record reveals disagreement regarding how CPP should be classified, and the significance of prior Commission statements regarding CPP. Some commenters in the *Notice of Inquiry* record argue that states have jurisdiction over CPP as a billing practice, while other

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[9] Section 332 of the Communications Act defines CMRS, and describes the general parameters governing the way in which these services are to be regulated. *See* 47 U.S.C. § 332.

[10] *See* Letter from S. Tuller, Vice President - Legal and External Affairs, General Counsel, and Secretary, BAM, to T. Sugrue, Chief, WTB, (Feb. 4, 1999) (*BAM Letter, Feb. 4, 1999*); Letter from D. Brittingham, Director - Wireless Matters, Government Relations, Bell Atlantic, to J. Schlichting, Deputy Bureau Chief, WTB, (Mar. 1, 1999) (*Bell Atlantic Letter, Mar. 1, 1999*). BAM also asks that the Bureau clarify that the format of the notice to the calling party as planned by BAM is just and reasonable and establishes informed consent. This part of BAM request is discussed later in the Notice of Proposed Rulemaking section of this order. *See* para. 41.

[11] 47. U.S.C. § 332(c)(3). We take this action on our own motion pursuant to Section 1.2 of the Commission's Rules, 47 C.F.R. § 1.2. While declaratory rulings are not subject to provisions of the Administrative Procedure Act, Pub. L. No. 105-394 (codified at 5 U.S.C. §§ 553(b)- 553(c)), requiring notice and opportunity for comment, we note that this issue was addressed in the *NOI*, which was published in the Federal Register, 62 Fed. Reg. 58700 (1997), and comments were received, which we have considered in issuing our decision. The Declaratory Ruling will be published in the Federal Register. Our Declaratory Ruling does not apply to possible CPP-like offerings, discussed below in the Notice of Proposed Rulemaking, paras 73 -74, where the party calling a CMRS provider's customer does not become a customer of that provider for that call, but instead incurs charges from his or her own carrier, such as the wireline LEC.

commenters support Commission jurisdiction, relying on the rationale that CPP is a CMRS service.

10. Many commenters, such as PCIA,[12] argue that CPP is CMRS, that CPP satisfies the regulatory definition of a CMRS service, and thus is subject to the provisions of Section 332 of the Act.[13] BAM submits that CPP comports with the statutory definition of CMRS set out in Sections 3(n) and 332 of the Communications Act and Part 20 of the Commission's rules.[14] Several parties contend that because CPP is a means of providing airtime on CMRS networks, and the rates charged for this airtime are CMRS rates, CPP should be classified as CMRS.[15] Further, CTIA describes CPP as a mechanism designed to compensate CMRS providers for calls made to wireless customers that is no different from any other CMRS rate mechanism, except for a change in the entity charged.[16]

11. Some parties contend, to the contrary, that CPP is merely a billing practice. SBC asserts that determining which end user pays for a call and obtaining payments is a billing and collection service. According to SBC, billing services are administrative services and not telecommunications services, as explained in the description of billing and collection services in 1996 *Non-Accounting Safeguards Order* that addresses Sections 271-272 of the Act.[17] SBC argues that the House Report on Section 332 illustrates that among the matters within the scope of "other terms and conditions of [CMRS]" under Section 332(c)(3)(A)[18] are customer billing information and practices, billing disputes, and other consumer matters that remain

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[12] *See, e.g.*, PCIA Comments to NOI at 3-4; Motorola Comments to NOI at 8-10; *Bell Atlantic Letter, Mar. 1, 1999* at 2.

[13] 47 U.S.C. § 332.

[14] *See BAM Letter, Feb. 4, 1999* at 3 (referring to 47 U.S.C. §§ 3(n) (current version at 47 U.S.C. § 3(27) (1996), 332, and 47 C.F.R. Part 20).

[15] *See generally*, Bell Atlantic Comments to NOI at 6; GTE Comments to NOI at 18-21.

[16] CTIA Comments to NOI at 14-15.

[17] *See* SBC Comments to NOI at 3-4, citing Implementation of the Non-Accounting Safeguards of Sections 271 and 272 of the Communications Act of 1934, as amended, CC Docket No. 96-149, First Report and Order, 11 FCC Rcd 21905, 22007 (para. 217) (1996) (*Non-Accounting Safeguards Order*), and Implementation of the Non-Accounting Safeguards of Sections 271 and 272 of the Communications Act of 1934, as amended, CC Docket No. 96-149, Notice of Proposed Rulemaking, 11 FCC Rcd 18877 (1996) (*Non-Accounting Safeguards Notice*). *See* 47 U.S.C. §§ 271-272.

[18] 47 U.S.C. § 332(c)(3)(A).

under state authority.[19] U S West also contends that CPP is solely a billing service.[20] The National Association of Regulatory Utility Commissioners (NARUC) has stated that CPP is a "service billing option," not a service option.[21] Taking yet another approach, the Ohio PUC asserts that CPP is a LEC service rather than CMRS.[22]

12. The parties have analogously differing views about the import of various past Commission statements. In the *Arizona Decision*, we denied a petition by the Arizona Corporation Commission (ACC) requesting authority under the Communications Act to retain state regulatory authority over the rates of intrastate CMRS and the entry of CMRS providers within Arizona.[23] In the course of the discussion, the Commission dismissed an argument by ACC that its intervention into a matter concerning CPP "customer billing" was evidence of the continued need for state rate regulation of CMRS. The Commission stated: "Under the Communications Act, however, billing practices are considered 'other terms and conditions' of CMRS offerings, not rates, and the ACC retains authority to regulate such practices. Regulatory activity concerning such practices is not justification for continued rate regulation authority."[24]

13. Those parties arguing that CPP is a billing practice contend generally that the *Arizona Decision* supports this view.[25] In contrast, several commenters contend that the Commission's description of CPP in the *Arizona Decision* was not part of its holding in the case, and is therefore dicta.[26] These parties further argue that the decision does not examine the nature of CPP and that the description of CPP is not based on an analysis of whether state

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[19] SBC Comments to NOI at 5, citing H.R. Rep. No. 103-111, at 261 (1993) (*House Report*).

[20] *See* U S West Comments to NOI at 1-3.

[21] *See* Resolutions Regarding the FCC Inquiry on the CMRS "Calling Party Pays" Service Option, NARUC, (Mar. 4, 1998) (*NARUC Resolution*).

[22] Ohio PUC Comments to CTIA Petition at 3.

[23] Petition of Arizona Corporation Commission to Extend State Authority over Rate and Entry Regulation of All Commercial Mobile Radio Services and Implementation of Sections 3(n) and 332 of the Communications Act, PR Docket No. 94-104 and GN Docket No. 93-252, Report and Order and Order on Reconsideration, 10 FCC Rcd 7824, 7837 (paras. 15-17) (1995) (*Arizona Decision*). In this proceeding, the ACC sought to continue to regulate CMRS rates pursuant to the criteria set forth in Section 332(c)(3) of the Act, 47 U.S.C. § 332(c)(3).

[24] *Arizona Decision*, 10 FCC Rcd at 7837 (paras. 15-17).

[25] *See, e.g.*, SBC Comments to NOI at 3-7; U S West Comments to NOI at 8.

[26] *See* GTE Comments to NOI at 19; Motorola Comments to NOI at 14; PCIA Comments to NOI at 9; Sprint Spectrum Comments to NOI at 19.

regulation of CPP constitutes regulation of CMRS rates or entry under Section 332.[27] Moreover, Motorola argues that, if the *Arizona Decision* is read to give the states the authority to regulate all aspects of CPP, it would run counter to the Commission's authority under Sections 332(c) and 2(b) of the Communications Act, and thus, should be overruled.[28] Bell Atlantic further contends that while the discussion of CPP is not the focus of the *Arizona Decision*, that Order, when properly read, confirms that CPP is CMRS.[29]

C. Discussion

14. In this Declaratory Ruling we clarify the regulatory status of CPP offerings. We address various critical issues regarding the implications of that regulatory classification in the NPRM.

15. We find that CPP offerings, as defined in paragraph 2 above, are properly classified as CMRS services pursuant to Section 332 of the Act.[30] We turn, first, to the statutory language, along with our implementing rules,[31] that define "commercial mobile radio service," or "CMRS." In order to determine whether a particular service could constitute CMRS, we look to Section 332(d) of the Act. As provided by the statute,[32]

> the term "commercial mobile service" means any mobile service (as defined in section 3) that is provided for profit, and makes interconnected service available (A) to the public or (B) to such classes of eligible users as to be effectively available to a substantial portion of the public, as specified by regulation by the Commission . . . .

Section 3 of the Act and Section 20.3 of the Commission's Rules, in turn, define the term "mobile service" in pertinent part as "a radio communication service carried on between mobile stations or receivers and land stations, and by mobile stations communicating among themselves."[33] The Act further specifies the definition of radio communication as follows: "The term 'radio communication' or 'communication by radio' means the transmission by

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[27] *See* CTIA Comments to NOI at 13; GTE Comments to NOI at 19; Motorola Comments to NOI at 14-15.

[28] Motorola Comments to NOI at 14-15; Motorola Reply Comments to NOI at 10.

[29] *Bell Atlantic Letter, Mar. 1, 1999* at 1.

[30] 47 U.S.C. § 332.

[31] Section 20.3 of the Commission's Rules, 47 C.F.R. § 20.3.

[32] 47 U.S.C. § 332(d)(1).

[33] 47 U.S.C. § 3(27); Section 20.3 of the Commission's Rules, 47 C.F.R. § 20.3.

radio of writing, signs, pictures, and sounds of all kinds, including all instrumentalities, facilities, apparatus, and services (among other things, the receipt, forwarding, and delivery of communications) incidental to such transmission."[34]

16. We find, first, that CPP offerings would meet the "mobile service" part of the definition. In CPP, the calling party, whether from a land or mobile station, would be seeking to use radio spectrum and related wireless network facilities to transmit writing, signs, pictures and sounds to a mobile station.[35] CPP would also be provided "for profit," as required by the statute.[36] Whether the payment for a call to a mobile subscriber comes from the calling party or from the mobile subscriber under CPP, the payment accrues directly to and compensates the CMRS provider of the mobile "communications service" for providing service to the mobile subscriber. We further find that CPP would meet the "interconnected service" criterion of the definition for commercial mobile radio service.[37] Under CPP, a calling party would be sending a message over the "public switched network," as those terms are defined by the regulation, to reach the mobile phone of the CMRS subscriber. Finally, we

[34] 47 U.S.C. §3(33).

[35] Section 3(28) of the Act defines "mobile station" as "a radio-communications station capable of being moved and which ordinarily does move." 47 U.S.C. § 3(28). This includes paging units as well as mobile telephone handsets used in subscribing to CMRS.

[36] Commission regulation, as adopted pursuant to the *CMRS Second Report and Order*, Implementation of Sections 3(n) and 332 of the Communications Act, Regulatory Treatment of Mobile Services, GN Docket 93-252, Second Report and Order, 9 FCC Rcd 1411, 1425, 1427-28 (paras. 39-43) (1994) (*CMRS Second Report and Order*), *recon. pending* (adopting Section 20.3), further delineates the statutory definition. Section 20.3(a)(1) adds to the phrase, "provided for profit," the following language: "*i.e.*, with the intent of receiving compensation or monetary gain." Section 20.3(a)(1) of the Commission's Rules, 47 C.F.R. § 20.3(a)(1).

[37] 47 U.S.C. § 332(d); Section 20.3 of the Commission's Rules, 47 C.F.R. § 20.3. That criterion, set forth in Section 332(d)(2) and explicated by Section 20.3(a)(2) of the Commission's Rules, provides that interconnected service is a service that "is interconnected with the public switched network . . . , that gives subscribers the capability to communicate to or receive communications from all other users on the public switched network." *CMRS Second Report and Order*, 9 FCC Rcd at 1434 (paras. 54-55); Section 20.3 of the Commission's Rules, 47 C.F.R. § 20.3. Further, the definition of "interconnected" in the CMRS context comprises a "direct or indirect, connection through automatic or manual means (either by wire, microwave, or other technologies) to permit the transmission of messages or signals to or from points in the public switched network." Section 20.3 of the Commission's Rules, 47 C.F.R. § 20.3; *see CMRS Second Report and Order*, 9 FCC Rcd at 1435 (para. 56). The regulation also specifies that the definition of "public switched network" includes "[a]ny common carrier switched network, whether by wire or radio, including local exchange carriers, interexchange carriers, and mobile service providers . . . ." Section 20.3 of the Commission's Rules, 47 C.F.R. § 20.3. The Commission is authorized to define "public switched network," pursuant to Section 332(d) (defining the term "interconnected service" as "service that is interconnected with the public switched network (as such terms are defined by regulation by the Commission) . . . ." 47 U.S.C. § 332(d)(2).

find that CPP would satisfy the statutory requirement of being "available . . . to the public."[38] Based on the record here, CMRS providers offering CPP service would be making it available on nondiscriminatory terms and conditions to all potential subscribers and to calling parties who want to reach the mobile subscribers who have the CPP service option.[39] Thus, CPP offerings would satisfy the relevant statutory definition for CMRS.

17. Moreover, we find that there is no reference in the statutory definition to who pays for the call, and no suggestion that CPP, which would satisfy all requirements of the definition, should be excluded because the calling party pays the airtime charges." Whether the payment obligation to the CMRS provider for using that airtime falls on the party initiating the call (CPP) or on the party receiving the call, the underlying transmission and wireless network facilities remain the same as those currently used to provide CMRS and, as described, would be subject to Section 332 of the Act.[40] In agreeing to pay for the call to the CMRS subscriber, the calling party becomes, for the purpose of completing the call, a customer of the CMRS provider. Placement of a CPP call by the calling party thus operates similarly to casual calling services whereby the call to a mobile user does not require the calling party to establish an account, or presubscribe, with the CMRS provider.[41] Thus, a CPP offering, while transferring some payment aspects of the call to a customer other than the owner of the mobile phone, does not in any fashion alter the regulatory classification of the call.[42]

18. We also reject the view that classifying CPP as CMRS is inconsistent with the *Arizona Decision.* In that decision, we gave only limited attention to the regulatory classification of CPP, but instead focused on addressing ACC's case for continued rate

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[38] 47 U.S.C. § 332(d)(1).

[39] Because we have concluded CPP meets the three definitional elements established in paragraphs (1) through (3) of Section 20.3(a), we find that it is not necessary to consider the alternative definition of "functional equivalent" of a mobile service and whether CPP would satisfy it or whether certain CPP services would meet the definition established in Section 20.3(c), which includes any service for which a license is required in a personal communications service under Part 24 of the Commission's Rules. *See* Section 20.3(b) of the Commission's Rules, 47 C.F.R. § 20.3(b).

[40] 47 U.S.C. § 332.

[41] *See generally*, Policy and Rules Concerning the Interstate, Interexchange Marketplace, CC Docket No. 96-61, Order on Reconsideration, 12 FCC Rcd 15014, 15026-27 & n.74 (para. 18) (1997) (*Casual Calling Reconsideration*), describing casual calling service; *see below* para. 51.

[42] Our finding here does not cover possible CPP-like offerings, discussed below in the Notice of Proposed Rulemaking, paras. 72 -74, where the party calling a CMRS provider's customer does not become a customer of that provider for that call, but instead incurs charges from his or her own carrier, such as the wireline LEC. We seek comment on the regulatory classification of those offerings in the Notice.

regulation of CMRS generally. For instance, that decision did not address explicitly the statutory criteria of Section 332(d) as to whether CPP is CMRS, or describe CPP in any detail. Even so, we agree with BAM that the underlying premise of that order is that the Commission considered CPP as CMRS, as evidenced by the fact that the Order addressed the issues there in the context of Section 332. Indeed, the discussion of CPP-related billing practices in the *Arizona Decision* simply concerned whether such practices fall within the scope of " 'other terms and conditions' *of CMRS offerings*."[43] Thus, the *Arizona Decision* implicitly characterized CPP as a CMRS offering.

19. We also regard the discussion of CPP in the *Arizona Decision* as dicta. In the *Arizona Decision,* the Commission rejected ACC's argument that it needed continued rate regulation authority on the basis of two examples, including CPP. In discussing this decision, the Commission found that it could not conclude that "*these isolated incidents* constitute a pattern of anticompetitive practice that might warrant continued state rate regulation."[44] The conclusion regarding "these isolated incidents" holds true whether or not Arizona's intervention into a CPP matter involved a CMRS service or a billing practice. Accordingly, we find that the possible characterization of CPP as a "billing practice" was not essential to the decision and therefore dicta. Finally, to the extent that the *Arizona Decision* is found as holding that CPP does not constitute a CMRS service, we hereby overturn any such holding.

IV. NOTICE OF PROPOSED RULEMAKING

A. Basis for Initiating Rulemaking

20. The Commission is initiating this Notice of Proposed Rulemaking for two fundamental reasons. First, the availability of CPP as a service offering for wireless telephone subscribers has the potential to expand wireless market penetration and minutes of use and, in so doing, offers an opportunity to provide a near-term competitive alternative to incumbent local exchange carriers (ILECs) for residential customers. Second, we believe that there may be obstacles to the widespread introduction of CPP, and that market forces alone may not eliminate these obstacles.

[43] *Arizona Decision*, 10 FCC Rcd at 7837 (para.59) (emphasis added).

[44] *Id.* at 7837 (para. 60) (emphasis added).

1. Potential Benefits of CPP Offerings

21. In the *Notice of Inquiry*, we sought comment on the demand-stimulating effects and other potential benefits of CPP.[45] Based on the record before us, we find that CPP could provide several important tangible benefits to telecommunications consumers in the United States. Although current CPP offerings have been limited in scope, we understand that a number of carriers are considering launching larger scale rollouts of CPP.[46] One major benefit envisioned is the possibility that CPP could ultimately lead to wireless services becoming a true competitive alternative to the local exchange services offered by ILECs, particularly for residential customers. Another potential benefit is that CPP could spur competition within the CMRS market by offering consumers a different and less expensive wireless service option.

22. Many carrier commenters have argued that subscribership to wireless services would be expected to increase substantially because, in no longer paying for incoming calls, consumers would have a much more valuable service, even at current prices.[47] Independent market analysts have indicated that CPP would make prepaid wireless services, a critically important and growing segment of the CMRS market,[48] more attractive to consumers by eliminating airtime charges for incoming calls.[49] Because prepaid wireless telephone service is attracting many new wireless customers from socioeconomic groups that have not

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[45] *NOI*, 12 FCC Rcd at 17697-99 (paras. 10-14).

[46] *See, e.g., BAM Letter, Feb. 4, 1999; Bell Atlantic Letter, Mar. 1, 1999.*

[47] *See, e.g.*; AirTouch Reply Comments to NOI at 10, Omnipoint Comments to NOI at 22.

[48] Prepaid wireless is an arrangement in which a consumer buys a wireless phone and then pays in advance for service by buying a card that is applied to an amount of minutes of talk time preset by the wireless carrier. In some instances, the phone and the amount of minutes are marketed together for a fixed price. A recent study indicated that over 60% of those who do not currently subscribe to wireless services would be more likely to subscribe if they had greater control over their monthly wireless expenditures, as would be the case with prepaid service. *CPP & Prepaid Cellular Market Opportunities*, STRATEGY ANALYTICS, Oct. 1998, at 18-19. We note also that Omnipoint, a strong proponent of CPP, recently released first quarter 1999 subscriber data indicating that approximately 60 percent of its subscriber base is prepaid. L. MUTSCHLER, MERRILL LYNCH EQUITY RESEARCH, OMNIPOINT CORP.: 1Q 99 (May 11, 1999).

[49] Analysts of the wireless industry have noted the value of CPP as a complementary service to prepaid wireless. *See* J.P. MORGAN SECURITIES, WIRELESS VOICE INDUSTRY 29 (Oct. 14, 1998) (finding that CPP adds substantial utility to the prepaid services, because subscribers can continue to recharge at minimum levels and still receive unlimited 'free' inbound calling, as the calling party is paying); MERRILL LYNCH, THE NEXT GENERATION III: WIRELESS IN THE U.S. 15 (Mar. 10, 1999) (prepaid has not been a huge factor in the U.S., partly because the U.S. does not have CPP).

previously subscribed to wireless service,[50] the broad availability of a prepaid option, in which the subscriber pays only to make calls, would reinforce the trend to much greater wireless penetration. This may be particularly true among those consumers who may find the traditional called-party-pays wireless service too expensive because they are charged both to place and receive calls. Finally, a recent market research study conducted for BAM indicated that among non-users of wireless phones, 55 percent agree that charging the calling party is a fair way to charge for incoming calls to a wireless phone.[51] The idea that CPP is a more equitable approach than the current system of called party pays was also the primary reason respondents gave for considering CPP favorably.[52]

23. Many industry analysts and commentators anticipate that CPP is the catalyst needed to create a significant increase in wireless usage by U.S. subscribers.[53] First, CMRS subscribers who select CPP may be more likely to leave their wireless phones in an activated mode in order to receive calls because they would not be responsible for paying the associated charges. Nevertheless, even if CPP were available, some CMRS subscribers may prefer to keep their mobile phone turned off so they are not disturbed while in a meeting or to conserve the battery life of their mobile phone. Also, because CPP customers would be expected to be more willing to give out their wireless phone numbers if they did not have to pay for incoming calls, they would be much more likely to receive incoming calls. As a result of the increased accessibility of CPP subscribers, these analysts believe, it is likely that more calling parties will place calls to wireless subscribers and take advantage of the opportunity to reach someone who is not tied to one location. This provides the added benefits to the calling party who will have an increased likelihood of being able to complete a call to a CPP subscriber, as compared to calling a wireless subscriber with *called party pays* service, who may turn his or her wireless phone off in order to help control spending.

24. Second, according to these analysts, to the extent that subscribers are comfortable with paying a set amount per month for wireless service, CPP will encourage them to increase

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[50] For example, AirTouch indicates that their prepaid subscribers are younger, have lower income, are less educated, and are less likely to be married than a traditional AirTouch subscriber who is billed for service. *See Ex parte* Letter from P. Riley, Vice President, Federal Regulatory, AirTouch Communications, to M. Salas, Secretary, FCC (May 7, 1999).

[51] BAM *Ex parte* filing of May 27, 1999 at 11-12.

[52] *Id.* at 16.

[53] *See, e.g.*, MERRILL LYNCH GLOBAL SECURITIES RESEARCH & ECONOMICS GROUP, CALLING PARTY PAYS (Mar. 24, 1999); *CPP & Prepaid Cellular Market Opportunities*, STRATEGY ANALYTICS, Oct., 1998; K. Beckman, *Wireless Should Strive for Bigger Piece of Total Minutes*, WIRELESS WEEK, June 29 1998, at 24; *Schmitt: CPP Key to Further Growth*, WIRELESS WEEK, Sept. 14, 1998, at 44; *Visionaries Ponder Future Directions of Wireless*, COMMUNICATIONS TODAY, Sept. 28, 1998.

the number of calls they make, up to the amount of their monthly CMRS budget, since they no longer will need to pay for, or budget for, incoming calls. While we have no data regarding increased usage of CPP subscribers in the United States, CPP has been credited with stimulating the usage of wireless telephones in many countries in which it has been implemented. Experience in countries in which wireless subscribers pay only to place calls suggests that wireless subscribership and usage increases dramatically once CPP is implemented. For example, a recent J.P. Morgan Securities research report on the Latin American telecommunications industry predicted wireless subscriber growth of at least 40 percent in Mexico as a result of the introduction of CPP, and described a doubling of wireless subscribers in Peru in the two years since CPP was introduced.[54] Telecommunications analysts also anticipate a significant increase in wireless subscribership in Chile as a result of the introduction of CPP in March of this year.[55] Interestingly, Argentina introduced CPP in 1997 in two different forms: a full CPP in the interior portions of the country, and a limited form of CPP in Buenos Aires in which the mobile party still pays for calls from other mobiles or from certain fixed phones. Where full CPP is offered in the interior portions of Argentina, over 99 percent of existing subscribers voluntarily switched to the new service. Adoption of the limited form of CPP in Buenos Aires, on the other hand, was much lower.[56] It is not clear, however, whether this growth is solely attributable to CPP or if other factors also may be contributing to this growth (*e.g.* the introduction of prepaid service options).

25. Given the rapid rate of change in the wireless industry around the globe, we would like to update our record on the experience with CPP and its impacts on the use of mobile services in other countries. We therefore seek comment on any recent international developments that may be relevant to the formulation of a CPP service offering in the U.S. In addition, we seek comment on recent competitive trends and other CMRS offerings in the U.S. domestic market that may be relevant to the introduction of a CPP offering in the U.S.

2. Obstacles to CPP Offerings

26. In our *Notice of Inquiry* regarding CPP, we asked about possible obstacles to greater availability of this service option. In summary, the responses indicate three areas that

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[54] SIMON FLANNERY, J.P. MORGAN SECURITIES INC., TELMEX – PLAYING SAFE IN LATIN TELECOMS 10 (Jan. 20, 1999).

[55] *See e.g.*, Tim Vandenack, *Calling Party Pays Brings Mobile to the Mainstream*, WIRELESS WEEK, Mar. 15, 1999, at 8A.

[56] Mario Capizzani, *Implementing Calling Party Pays -- The Argentine Experience*, presentation at IBC CPP Conference, Miami Beach, FL, Dec. 7, 1998.

need to be addressed: (1) technical standards to control leakage;[57] (2) calling party notification to protect consumers;[58] and (3) arrangements for reasonably priced billing and collection services.[59] The technical standards to collect and pass information needed to bill the calling party for calls to a wireless phone are being developed by an industry group, based on a working paper developed through CTIA and released in January 1998.[60] There has been no indication in the comments that the Commission needs to intervene in this process.

27. Based on the record to this point, it appears that the lack of a nationwide notification has hindered successful CPP offerings in this country. The record strongly supports the conclusion that some effective form of calling party notification is critically important to avoid consumer confusion with CMRS provider introduction of CPP offerings. Further, the comments almost unanimously indicate that without a uniform notification system, conflicting state notifications would increase consumer confusion about calls to CPP subscribers if CPP were to be implemented more widely. Another consequence of conflicting notifications would be increased costs to wireless carriers in their efforts to provide notifications to calling parties in different jurisdictions. We believe that it is essential to develop a uniform notification system, in cooperation with the states, and we seek comment on what elements that notification system should contain.

28. Although the record with respect to billing and collection issues contains a variety of views, some commenters suggest that the Commission may need to act to ensure that CMRS carriers have access to billing and collection services.[61] There is disagreement among the commenters about the need for Commission intervention to resolve this problem. Although there is evidence to suggest that CPP cannot be offered effectively on a nationwide basis unless billing and collection services can be obtained from the LEC that serves the calling party,[62] a number of commenters point to the availability of various alternatives to LEC billing and collection, such as credit cards, third party clearing houses, and other utility

[57] *See, e.g.*, GTE Comments to NOI at 13; AirTouch Comments to NOI at 25; Bell Atlantic Comments to NOI at 3.

[58] *See e.g.*, CTIA Comments to NOI at 6-7; Sprint Spectrum Comments to NOI at 11.

[59] *See, e.g.*, AirTouch Comments to NOI at 18, Omnipoint Comments to NOI at 15.

[60] CTIA, SERVICE DESCRIPTION FOR CALLING PARTY PAYS (CTIA Working Paper, Jan. 1998).

[61] *See, e.g.* AirTouch comments to NOI at 17-24; Vanguard Comments to NOI at 2-3; Omnipoint Reply Comments to NOI at 3-4.

[62] *See, e.g.*, AirTouch Comments to NOI at 17-18; Omnipoint Comments to NOI at 7.

companies that serve the same customers,[63] as alternative approaches.[64] As discussed below,[65] we seek comment on the need for Commission regulation of LEC billing and collection services, and the legal basis for such action.

29. In sum, it is our tentative view that it is in the public interest for the Commission to adopt limited rules with respect to CPP. Despite interest in CPP by a number of wireless carriers over a fairly long period, CPP has made only modest inroads into the predominant "called party pays" regime in the United States. We believe this may be a result of a combination of problems, including calling party notification and billing and collection. It is our desire to remove possible obstacles to CPP, so that all consumers, including those with disabilities, will have an opportunity to choose to use CPP offerings. Only in this way will carriers have the opportunity to initiate broad scale CPP offerings and allow consumers in the marketplace to determine the "real world" benefits of CPP.

B. Calling Party Notification

1. The Need for Effective Nationwide Calling Party Notification

30. It is clear that some effective form of calling party notification is critically important to avoid consumer confusion with any widescale CMRS provider introduction of CPP offerings.[66] A threshold issue concerning notification is whether there should be a uniform nationwide standard that specifies the manner in which a CMRS carrier must indicate to a caller that the caller will be billed for his or her call to the CMRS phone or pager. A second issue is how to develop and implement such a notification standard, particularly how we may incorporate the knowledge and concerns of the states with regard to consumer notification and protection.

31. The record of comments received from the *Notice of Inquiry* and the *CTIA Petition* supports the need to develop and implement a uniform, nationwide notification system to support possible large-scale CPP offerings. Such a notification would provide notice to calling parties that they are placing a CPP call and, therefore, that they will be billed for the charges associated with the CPP call. CTIA argues that a uniform national consumer notification program is needed to minimize caller confusion, to ensure the growth of CPP, and

[63] *See e.g.*, AT&T Wireless Comments to NOI at 2-3; BellSouth Reply Comments to CTIA Petition at 6.

[64] For instance, CTIA does not ask the FCC to regulate billing and collection. *CTIA Letter, Dec. 16, 1998. See also* CTIA Reply Comments to NOI at 5-6, asserting that it is not necessary at this time to require the LECs to provide billing and collection services for CPP when they only need to provide the data necessary for billing.

[65] *See* below paras. 55-68.

[66] *See, e.g.*, Ohio PUC Comments to CTIA Petition at 8-10; WUTC Comments to NOI at 4-6.

to minimize the cost to wireless carriers of providing such notifications.[67] Commenters have claimed that the fact that a large number of CMRS providers serve multistate areas argues for a single notification to eliminate the possibility of conflicting notification requirements. For instance, CTIA notes that 82 percent of MTA-based PCS license areas and 23 percent of the BTA-based PCS license areas are interstate and that there is significant operation of CMRS across state boundaries.[68] Where a call originates in one state and is terminated in a second state, problems easily could arise if the notification requirements in the two states involved were not the same. Bell Atlantic cites its Washington-Baltimore system as an example of a system that overlaps three jurisdictions and could, therefore, be subject to three different and potentially conflicting notification requirements.[69] According to CTIA, different state regulations would require CMRS carriers to program each state's individual notification requirements into each one of their switches.[70]

32. Similarly, Vanguard asserts that state regulation of CPP would create unsolvable practical problems, especially for traffic that has multiple jurisdictional components and, consequently, a patchwork of fifty state regulations would impede development of CPP.[71] U S West asserts that if a state were to require that a blocking capability be provided to the calling party, the notification process would be sufficiently expensive for some CMRS carriers to preclude regional or nationwide implementation of CPP service.[72] U S West explains that it currently offers only a generic announcement for CPP because of the significant cost of implementing unique announcements for each carrier and each state.[73] A single notification would also facilitate industry-wide initiatives to educate the calling public about CPP.[74] The WUTC endorses an FCC effort to establish a uniform national approach, finding precedent in the uniform rules that govern how callers accept charges associated with 900 services and

[67] CTIA Reply Comments to NOI at 7.

[68] CTIA Comments to NOI at 17-24.

[69] Bell Atlantic Reply Comments to NOI at 2.

[70] CTIA Comments to NOI at 22-23, citing TCA Cablevision of Oakland Count, Inc. Petition for Declaratory Ruling, Preemption and Other Relief Pursuant to 47 U.S.C. Secs. 541, 544(e), and 253, CSR-4790, Memorandum Opinion and Order, 12 FCC Rcd 21396, 21442 (para. 106) (1997).

[71] *See* Vanguard Comments to NOI at 12; *see also* CTIA Comments to NOI at 3.

[72] *See* U S West Comments to NOI at 5 & n.4.

[73] U S West Comments to NOI at 5.

[74] *See* CTIA Comments to CTIA Petition at 3.

noting its own lack of authority to protect consumers sufficiently.[75] The Ohio PUC, however, recommends that we adopt only a minimum standard regarding calling party notification and permit states to adopt additional requirements.[76]

33. We agree with the commenters that a uniform nationwide notification system that would apply to all calls is necessary to facilitate the implementation of CPP. Based on the record, we find that such a notification would significantly alleviate confusion on the part of calling parties by providing them the capability to make an informed decision on whether to proceed with completing the call. In addition, as several commenters submit, a uniform nationwide standard for notification announcement would likely minimize the cost to wireless carriers of providing a notification, especially where they service multistate areas. We seek comment on what additional consumer protection measures states could take that would be consistent with a uniform notification announcement and within the scope of their authority to protect consumers. Such measures might consist of billing inserts and other means to educate consumers.

2. Implementation

34. We believe that we have jurisdiction to implement a uniform nationwide notification under Sections 201(b) and Section 332(c)(3)(A) of the Act.[77] In addition, we recognize the traditional role of the states in the areas of consumer notification and protection. Indeed Section 332(c)(3)(A) provides that States may regulate "other terms and conditions" of any CMRS service.[78]

35. In the record before us, AT&T Wireless asserts that although the states retain general jurisdiction over consumer protection issues under Section 332(c)(3),[79] the Commission retains a strong interest in ensuring that any CPP regulation does not frustrate the

[75] WUTC Comments to NOI at 6.

[76] Ohio PUC Comments to CTIA Petition at 10.

[77] 47 U.S.C. §§ 201(b), 332(c)(3)(A).

[78] *See* 47 U.S.C. § 332(c)(3)(A); *see also House Report* at 261 (explaining that other "terms and conditions" of CMRS include such matters as customer billing information and practices, billing disputes and "other consumer protection matters.").

[79] AT&T Wireless NOI Comments at 6, citing *House Report* at 261 (explaining that other "terms and conditions" of CMRS include such matters as customer billing information and practices, billing disputes and "other consumer protection matters.").

Congressional mandate for national, uniform treatment of CMRS.[80] AT&T Wireless also contends that the Commission should prescribe uniform consumer protection rules to ensure that states do not impede CPP implementation by adopting inconsistent rules that would adversely effect CMRS carriers serving multiple states within a single system.[81] Other commenters suggest that the states should be able to continue in their traditional role of protecting consumers from deceptive trade practices, for example, ensuring that consumers are not billed for CPP services in a false or misleading manner.[82] Motorola recommends that the Commission should include state PUCs in an effort to develop a national notification procedure, but should not require that all states agree on the procedure selected.[83]

36. The Communications Act establishes as a primary mission of the Commission regulation of interstate and foreign communication so as to make available to all the people of the United States a rapid, efficient Nation-wide, and world-wide wire and radio communications service.[84] We also note that Section 201(b) declares unlawful any unjust and unreasonable practices, which clearly governs CMRS calls that originate and terminate in different states.[85] In addition, based on our determination that CPP is a form of CMRS, we believe that we may have authority under Section 332 of the Act to establish uniform rules in furtherance of our statutory mandate to "establish a federal regulatory framework to govern

[80] *See id.* citing to *House Report* at 260 and to Implementation of the Local Competition Provisions in the Telecommunications Act of 1996, CC Docket No. 96-98, First Report and Order, 11 FCC Rcd 15499, 15298, 16006 (paras. 861, 1025) (1996) (*Local Competition Order*). *See also* Sprint Spectrum Comments to NOI at 17-19.

[81] AT&T Comments to NOI at 6-7.

[82] *See* Motorola Comments to NOI at 15; PCIA Comments to NOI at 9.

[83] Motorola Comments to NOI at 17.

[84] 47 U.S.C. § 151.

[85] 47 U.S.C. § 201(b).

the offering of all [CMRS]."[86] In the alternative, we also seek comment on other jurisdictional grounds for establishing a uniform nationwide system for CPP notification.[87]

37. We further recognize, however, as the record reflects, that the states have a legitimate interest, pursuant to the "other terms and conditions" exception provided by Section 332(c)(3)(A),[88] to regulate matters concerning aspects of consumer protection involved, *e.g.*, in customer billing practices.[89]

38. We also note that in some states, the imposition of a nationwide calling party notification may be the only effective notification option available. For example, some state regulatory agencies may be limited by state law in imposing notification requirements with respect to CMRS regulation. WUTC indicates that it would welcome Commission involvement in establishing a uniform notification system due to its lack of authority to require a notification that includes the per-minute rates for CPP calls.[90]

39. Consistent with the suggestion of Motorola and others for cooperation with the states,[91] we believe that a process should be initiated that considers the role and interest of the states in consumer protection. We invite comment on how the Commission might tailor a nationwide notification system that would provide the states a way, consistent with statutory

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[86] H.R. Conf. Rep. No. 103-213 at 490 (1993). *See* CTIA Comments to NOI at 20, n. 42 (referring to this report in arguing for a nationwide notification, and also, referring to the Senate version, Sec. 402(13)). CTIA also suggests that notification is integral to our authority over CMRS rate regulation under Section 332 of the Act. Indeed, a key objective of CPP notification is to provide the caller with information about the rates, terms, and conditions of the CPP call so that the caller can make an informed decision regarding whether to complete the call. To the extent that rate information is included in the notification, we seek comment on whether the agency with authority over rates also has authority over the system to communicate these rates to consumers. At the same time, we seek comment on whether the provision of rate information to the public should be linked to the billing of the charge for the service. *See* AT&T v. Central Office Tel., 118 S. Ct. 1956, 1963 (1998) (observing that rates do not exist in isolation, as they have meaning only when one knows the services to which they are attached). We believe the connection between rates and billing through the process of notification is valid regardless of whether the filed-rate doctrine is implicated.

[87] For example, CTIA contends that "the Commission retains jurisdiction to ensure that inconsistent State regulation does not thwart uniformity of nationwide CPP notification mechanisms" *See* CTIA Comments to NOI at 17-18 & n.37 (citing Louisiana Public Service Commission v. FCC, 476 U.S. 355, 374 (1986)).

[88] *See* 47 U.S.C. § 332(c)(3)(A).

[89] *See House Report* at 261.

[90] WUTC Comments to NOI at 2 & n.1, 5.

[91] *See* Motorola Comments to NOI at 17; PCIA Comments to NOI at 10 (concerning action based on the comity between the Commission and the States).

authority, to protect intrastate interests in a manner that would not conflict with the nationwide benefits of a uniform notification system for CPP. We direct the Bureau to work actively with the states, through NARUC,[92] as well as with interested wireless industry and consumer representatives, to seek to develop a consensus implementation of our calling party notification proposal.

3. Proposed Means and Content of Calling Party Notification

40. We here seek to ensure calling party notification that protects all consumers, including those with disabilities, that reflects the knowledge and experience of the states, and that can be implemented on a cost-effective basis.

41. The *Notice of Inquiry* sought information regarding how the calling party can best be informed of charges for calls to CMRS subscribers, including the magnitude of the charges.[93] Commenters suggest a variety of forms of notification that contain different information. Omnipoint suggests the use of an Numbering Plan Area (NPA) code to alert the calling party that a call is being made to a wireless phone.[94] Others suggest a specific Service Area Code (SAC) for CPP calls.[95] CTIA submits that an educational message may be necessary, at least for a trial period of 18-24 months, until consumers become accustomed to CPP.[96] Thereafter, they suggest, a distinctive tone that would identify that a call is being made to a wireless phone could be provided.[97] Several other parties assert that the use of 1+ dialing, as is done now in several areas of the U.S., or a unique tone would not be sufficient to notify consumers.[98] They suggest that a message be provided to the calling party that would contain, among other information, a statement that a call is being made to a wireless phone, notice of an additional charge involved, and a simple means to obtain additional

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[92] We note that Commission staff has briefed state staff members of the NARUC Communications Subcommittee about CPP issues, such as notification and billing and collection.

[93] *See NOI,* 12 FCC Rcd at 17701 (para. 21).

[94] Omnipoint Comments to NOI at 3.

[95] *See* Ad Hoc Reply Comments to NOI at 7-8; MCI Reply Comments to NOI at 2.

[96] CTIA Comments to NOI at 7-12.

[97] *See* CTIA Comments to NOI at 7-12; Omnipoint Comments to NOI at 24.

[98] Omnipoint Comments to NOI at 25; Ohio PUC Comments to CTIA Petition at 9-10; Ad Hoc Reply Comments to CTIA Petition at 8, 11.

information about the CPP call, such as a toll-free telephone number.[99] Others urge including notice of the charge for a CPP call, as well as the opportunity to terminate or block the call after the notification has been provided.[100] BAM proposes to use a CPP notification that includes: the name of the carrier; the per-minute charge; and notice that the caller may hang up if they do not wish to accept the charge.[101] WUTC has commented that it believes a detailed uniform, nationwide consumer notification that includes rate information is necessary and desirable.[102]

42. As discussed above, we intend to develop a uniform notification announcement in cooperation with the states, consumers, and industry representatives. In order to further these discussions, we propose that the calling party notification for CPP should consist of a verbal message provided by the CMRS provider to the calling party. Because CPP will represent a significant change to consumers calling a wireless telephone or pager, we believe that initially it is important that notification include the following elements:

(1) Notice that the calling party is making a call to a wireless phone subscriber that has chosen the CPP option, and that the calling party therefore will be responsible for payment of airtime charges.

(2) Identification of the CMRS provider.

(3) The per minute rate, and other charges, that the calling party will be charged by the CMRS provider.

(4) Notice that the calling party will have an opportunity to terminate the call prior to incurring any charges.

43. These elements reflect our tentative agreement with the Ohio PUC, the WUTC, and others that a notification that does not include rate information would be an ineffective means of providing callers with sufficient information to make an informed decision about placing a call to a CPP subscriber. Although we acknowledge that specific rate information

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[99] *See* Omnipoint Comments to NOI at 24-25; WUTC Comments to NOI at 5; Rural Cellular Association Comments to CTIA Petition at 2. *See also*, Petro Com Comments to CTIA Petition at 2 (recommending the provision of a toll free number to the calling party).

[100] Omnipoint Comments to NOI at 25; WUTC Comments to NOI at 5; Ohio PUC Comments to CTIA Petition at 9-11.

[101] *BAM Letter, Feb. 4, 1999* at 2-3. BAM further seeks a ruling that their proposed notification system provides adequate information to calling parties and is just and reasonable. *Id.* at 5. *See* above note 10.

[102] WUTC Comments to NOI at 5.

may be superfluous in certain situations, such as cases in which the calling party would not intend to complete *any* call (regardless of the rate) for which he or she would be obligated to pay an additional charge, it is our tentative view that rate information would be considered relevant by a substantial majority of calling parties — common sense tells us that most people would be reluctant to undertake responsibility for paying for the call without some information about the amount of the payment. The rate information would have to include all of the additional charges billed by the CMRS provider to the calling party for the call. For example, we understand that CPP offerings envisioned by CMRS providers would include per minute charges for terminating airtime. It is possible that a CMRS provider may also include in its charges to the calling party other charges now paid by the CMRS subscriber receiving the call, for instance, for roaming or for long-distance service. If so, the calling party notification must include all of the per minute and other charges to be billed to the calling party. In this regard, it may be the case that the provision of rate information would serve as an effective means to facilitate CPP, because calling parties would be more inclined to complete CPP calls than they might be if they were left to guess what they would be billed for the call, to the extent they would deem the quoted rate as reasonable. We seek comment on this element in a proposed notification system.

44. We also seek comment on the desirability of moving to a simpler, more streamlined notification system that would not include rate information, after consumers have become accustomed to CPP and are aware of the additional charges involved.[103] For example, CTIA has suggested that after 18-24 months of a specific CPP notification message combined with a distinctive tone, consumers could be notified of a CPP call only with a distinctive tone.[104] We also seek comment on whether our proposed method of notification, as well as the simpler version described above, will be accessible to people with disabilities. For example, are there any notification problems that are unique to the placement of CPP calls through a TRS center, or between two TTYs, that need to be addressed?[105] We also request proposed solutions to any problems that are identified.

4. Other Notification Options

45. We also seek comment on other options for ensuring that calling parties have adequate notification — options that would be in place of, or in addition to our proposed

[103] A potential problem with a tone notification that does not provide rate information is the concern, discussed at paras. 53-54, that callers may be charged excessive rates for calls to CPP subscribers.

[104] CTIA Comments to NOI at 7.

[105] TRS enables individuals with hearing or speech disabilities who use a TTY to communicate by telephone with individuals without a TTY. *See* Part 64, Subpart F of the Commission's Rules, 47 C.F.R. pt. 64, subpt. F.

notification described above.[106] There are a number of notification options being used in states, such as Arizona, where CPP is now being offered. Some carriers rely on 1+ dialing as the means to indicate to the caller that a toll is involved. Others, such as in the State of Washington, have dedicated NXX[107] codes for CPP subscribers. The CPP trial that AT&T conducted in Minnesota used special numbers with a 500 SAC to identify the number as a CPP call. We seek comment on what additional notification measures states might be able to adopt that would not conflict with the uniform nationwide notification we propose above.

46. Comments have been received that suggest a unique service code would be an effective approach because it would mean that CPP calls would be readily identifiable, and would enable telephone switches and private branch exchanges (PBXs) to easily identify such calls.[108] We recognize that businesses need to restrict the ability of telephone users to make various types of billable calls from certain lines (*e.g.*, toll restricted lines on PBXs). Today, the area code and/or the office code is used as the basis for the switch to determine which calls can be made from a restricted line. CPP introduces a new type of billable call. At least one party expresses a concern that, absent readily identifiable CPP numbers, many PBX systems will be unable to block this new category of "toll" calls.[109] They indicate that without the ability to screen, block, or account for CPP charges if a call is completed, the PBX users may incur unrecoverable financial losses for calls placed on their premises.[110] We seek comment that will enable us to quantify the extent of these possible financial losses. Specifically, how many companies and other organizations use PBXs or Centrex and could be adversely affected by the broader implementation of CPP? What are the projected potential losses they might incur because of the inability to identify calls beings placed from their systems to CPP subscribers? What costs will these companies and organizations incur in upgrading their PBXs or Centrexes to block CPP calls? Finally, what is the technical feasibility of implementing such a blocking solution? We seek comment on these questions.

47. We also seek comment on the ways businesses and other organizations can meet the need for restricted access just noted, particularly if the telecommunications industry moves to more widespread number portability. In light of the number portability, number pooling, and other signaling system based solutions, we seek comments on the viability of signaling

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[106] *See* above para. 30.

[107] NXX is the three-digit number identifying the central office. *See* Section 52.7(c) of the Commission's Rules, 47 C.F.R. §52.7(c).

[108] *See, e.g.*, Ad Hoc Reply Comments to NOI at 7-8; Omnipoint Comments to NOI at 3, 23-24.

[109] Ad Hoc Reply Comments to NOI at 7-8.

[110] *Id.* at 2.

solutions, perhaps combined with line class codes.[111] Commenters should address the viability of proposed solutions and whether the solutions can be implemented with current network capabilities or not. Finally, we seek comment on whether establishing service codes would sufficiently address these issues. We also seek comment on the impact on business users, who use restricted access, if we were not to establish dedicated service codes. Through these focused comments, we hope to build a record on this important issue that will enable us to develop the best possible solution when we adopt a Report and Order in this proceeding.

48. Omnipoint suggests the use of "Easily Recognizable Numbering Plan Area Codes" (ERCs) for large carriers and another code (distinct NXXs within a mobile-only NPA) to be shared by smaller carriers.[112] CTIA points out, however, that a unique CPP area code as a substitute for a notification message would discriminate against smaller carriers and provide inconsistent notification to all callers. In addition, CTIA argues that, as the Commission continues to consider area code relief issues and number utilization, it is unsound to consider an NPA measure that would only exacerbate area code depletion.[113] Omnipoint alternatively suggests that a single NPA could be allocated to a group in large geographical areas without raising issues of NPA exhaust.[114] Omnipoint submits that it may be appropriate to allocate separate NPAs for each type of CMRS service — cellular, paging — to inform calling parties of the type of service.[115] Source One uses a nationwide single, toll-free number to access its Paging Party Pays (PPP) offering, because it eliminates the complication of multiple routing and pricing structures in using regional LECs for billing and collection.[116] The caller then is provided a notification that informs them that they are paging a PPP subscriber, and that a specified charge will appear on their telephone bill if they proceed with the call.[117] We seek comment on the desirability of establishing a dedicated service code or codes to assign to CPP subscribers so that callers may more readily identify a CPP call. We also seek comment on whether it is necessary or desirable to treat the notification for paging the same as mobile telephony. In particular, requiring the use of a distinct code would appear to be unworkable

[111] A line class code is a code used at the PBX or Centrex switch to restrict a specific number within the PBX or Centrex system from making a particular type of call.

[112] *See* Omnipoint Comments to NOI at 3 & n.4, 23-24; Omnipoint Comments to CTIA Petition at 8-9 & n.13.

[113] CTIA Reply Comments to CTIA Petition at 7-8.

[114] Omnipoint Comments to NOI at 23-24.

[115] Omnipoint Comments to NOI at 23-24.

[116] Source One Comments to NOI at 5-6.

[117] *Id.* at 6.

in the context of the Source One approach to CPP.[118] Therefore, we solicit comments that address the best ways of balancing the need for a uniform CPP notification approach using special numbering codes, with the need to work within the special operating constraints of paging carriers. Although such specially assigned telephone numbers could be used as the sole means of notifying consumers that they are calling a CPP number, we tentatively conclude that even were we to establish special numbers, they should serve to supplement the above notification system, not replace it. We seek comment on this tentative conclusion. Finally, we seek comment on the effect of calling party notification through assignment of numbering codes on number exhaust and number portability, and on possible means to mitigate any significant negative effects.

49. We find that we have the jurisdiction to establish calling party notification through dedicated numbering codes pursuant to Section 251(e)(1), which confers exclusive jurisdiction on the Commission over the North American Numbering Plan as it pertains to the United States, along with the power to delegate to the states certain portions of this jurisdiction.[119] The *Notice of Inquiry* record indicates that the Commission could rely on this provision if it were to implement a CPP notification scheme based on "1+dialing" or use of specialized area codes. CTIA also argues that the Commission could use its jurisdiction over numbering to preempt states from establishing inconsistent numbering schemes as the basis for CPP notification at the state level.[120] Without prejudging the issue of whether numbering would be an appropriate method of CPP notification,[121] we tentatively conclude that Section 251 of the Act does provide a jurisdictional basis to implement such a method, and we invite comment on this tentative conclusion.

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[118] *Id.* at 5. Another paging carrier, FreePage, uses a pay-per-call SAC to provide PPP in New York City. FreePage Comments to NOI at 1.

[119] Section 251(e)(1) states that "[t]he Commission shall have exclusive jurisdiction over those portions of the North American Numbering Plan that pertains to the United States . . . ." 47 U.S.C. § 251(e)(1).

[120] CTIA Comments to NOI at 12, n.25; *see also* Source One Comments to NOI at 5-6; Sprint Spectrum Comments to NOI at 4.

[121] Numbering Resource Optimization, CC Docket No. 99-200, Notice of Proposed Rulemaking, FCC 99-122 (released June 2, 1999).

5. Privity of Contract

50. In the *Notice of Inquiry* we sought comment regarding the need for CMRS carriers to create a contractual obligation for calling parties, who are not subscribers of the CMRS carriers, to pay for CPP calls.[122] CTIA suggests in its comments[123] and in a December 16, 1998, letter to Chairman Kennard,[124] that "informational tariffs" for CPP may ensure an enforceable agreement or an implied-in-fact contract between the calling party and the CMRS carrier, and to notify consumers of the liability limits granted to common carriers, including CMRS carriers, under Title II of the Communications Act. CTIA presents several options in its December letter, including "normal" tariff filings under Section 203,[125] the filing of informational tariffs under Section 211,[126] or the filing of periodic informational reports about CPP under Section 219.[127] [128] BAM asserts that if a calling party completes a call to a CPP number after being notified of the charge and being given an opportunity to hang up without incurring a charge, they have given informed consent that obligates them to pay for the service.[129]

51. We note that in a 1997 decision regarding "casual calling" we suggested that carriers have reasonable options other than tariffs to establish contractual relationships with casual callers that would legally obligate such callers to pay for their services, and that providing the caller the rates, terms, and conditions prior to the completion of a call would establish an enforceable contract between the caller and the carrier.[130] We believe that these same principles may apply in the context of CPP.

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[122] *NOI*, 12 FCC Rcd at 17701 (para. 21). Some wireless calling parties could be subscribers of the CMRS carrier serving the called party. In such a case, creating a contractual obligation could be done in the context of the calling party's agreement with the CMRS carrier.

[123] CTIA Comments to NOI at 23-27.

[124] *CTIA Letter, Dec. 16, 1998.*

[125] 47 C.F.R. § 203.

[126] 47 C.F.R. § 211.

[127] 47 C.F.R. § 219.

[128] *CTIA Letter, Dec. 16, 1998.*

[129] *BAM Letter, Feb. 4, 1999* at 4.

[130] *Casual Calling Reconsideration*, 12 FCC Rcd at 15031-32 (para. 28).

52. We seek comment on whether our proposed notification method ought to be sufficient to establish an "implied-in-fact" contractual arrangement between the CMRS provider and the calling party, and, if not, what else may be necessary.

C. Rates

53. Some commenters express concerns that the rates charged to callers for CPP calls could be significantly above competitive levels,[131] since these rates may not be subject to federal or state regulation.[132] They argue that some action may be necessary to safeguard the interests of consumers making calls to wireless phones or pagers under a CPP arrangement.[133] We do not regulate CMRS rates because consumers typically have a choice of several CMRS carriers who compete, on the basis of such things as price, to attract subscribers. Direct competitive pressure on the rate does not exist in the case of a call to a CPP subscriber, however, because the caller does not select the carrier and does not have the ability to switch to a different carrier to obtain a better rate for completing the call. The caller can only elect to complete the call at the price charged by the CMRS carrier that serves the called party, or terminate the call prior to its completion to avoid any charges. In the CPP context, there is only indirect competitive control on these rates, in that the CPP subscriber might ultimately switch to a different carrier with a better rate for incoming calls if excessive rates charged by its carrier result in the CPP subscriber not receiving its incoming calls, or might ultimately terminate the CPP option.

54. Although there is no evidence to suggest that CPP pricing will in fact be problematic if CPP is implemented on an extensive basis in the United States,[134] we have observed recent actions taken by European regulators in response to apparently excessive charges for calls to mobile telephones.[135] For example, the U.K. Office of

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[131] *See* Rural Telephone Companies' Comments to NOI at 3-4; *see generally* Ohio PUC Comments at 7-10.

[132] The states are preempted from regulating CMRS rates by Section 332(c)(3)(A) of the Communications Act, 47 U.S.C. § 332(c)(3)(A).

[133] *See* Celpage Comments to NOI at 8; Omnipoint Comments to NOI at 25; PCIA Comments to NOI at 12-13; Ohio PUC Comments to CTIA Petition at 9-10; Paging Network Reply Comments to CTIA Petition at 3-5; WUTC Comments to CTIA Petition at 2.

[134] *See, e.g.*, U S West Comments to NOI, Attachment A.

[135] *See, e.g., Brussels Probes Cost of Calls to Mobiles*, EUROPEAN TELECOMMUNICATIONS, Feb. 20, 1998; U.K. Office of Telecommunications, *OFTEL Submission to the Monopolies and Mergers Commission Inquiry into the Prices of Calls to Mobile Phones May, 1998* (visited Feb. 23, 1999) <http://www.oftel.gov.uk/pricing/mmc0598.htm >; U.K. Monopolies and Mergers Commission, *Report on References under Section 13 of the Telecommunications Act of 1984 on the Charges Made by Cellnet and Vodaphone for Terminating Calls from Fixed-Line Networks*, Dec. 1998 (visited Dec. 15, 1998)

Telecommunications (OFTEL) recently ordered reductions in the amount BT charges its wireline customers for calls to wireless phones, and reductions in the amount two wireless carriers, Vodaphone and Cellnet, charge BT to terminate its calls on their wireless networks.[136] As noted, although a CPP offering may provide a calling party with notification of the rates for a CPP call and an opportunity to terminate the CPP call before being charged for it, the calling party is not a CMRS subscriber and lacks any direct control over the rates it is charged by a CMRS carrier. Moreover, there may be situations where the calling party will have no choice but to complete a CPP call to a mobile subscriber notwithstanding the notification of the CPP rate and the opportunity to terminate the CPP call before completion. In these situations, the notification may not serve to protect a calling party from excessive rates. Accordingly, we urge commenters to discuss whether market conditions exist or are likely to develop in the United States that would exert competitive pressure on CPP rates to be charged a calling party by a CMRS carrier. Under this approach, we would defer regulatory intervention until there is clear evidence that Commission action is necessary to resolve rate issues. We seek comment on any other approaches that would help safeguard consumers who wish to place calls to CPP subscribers. In this regard, we note that our rules require that the rates charged for calls placed through TRS be no greater than the rates charged for a functionally equivalent call that does not use TRS facilities.[137] We request comment on whether methods are needed to ensure that the CPP rates charged for voice and TTY calls placed through TRS centers do not exceed those that do not use such facilities.

D. Billing and Collection

55. Some parties have argued in response to the *Notice of Inquiry* that we need to require incumbent LECs to provide CPP-related billing and collection services in order to resolve the problem that some CMRS carriers have apparently encountered in obtaining billing and collection services to implement CPP. As explained in further detail below, we have traditionally declined to regulate or require the provision of LEC billing and collection services. Given that background, we seek comment on whether, with nationwide or regional wireless CPP calling plans, LEC billing and collection is needed for CPP to be a viable service option nationwide, especially in view of attaining ubiquitous access to the mobile

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<http://www.oftel.gov.uk/pricing/cmmc1298.htm>; U.K. Monopolies and Mergers Commission, *Report on a Reference under Section 13 of the Telecommunications Act of 1984 on the Charges Made by British Telecommunication, PLC, for Calls from Its Subscribers to Phones Connected to the Networks of Cellnet and Vodaphone*, Dec. 1998 (visited Dec. 15, 1998) <http://www.oftel.gov.uk/pricing/bmmc1298.htm>; *Price Remains Key Element in Mobile Purchase*, TELECOMS PRICING BULLETIN, Issue 28/29, Nov. 25, 1998, *available in* 1998 WL 15562369.

[136] Sylvia Dennis, *UK Telecoms Regulator Bites Hard on BT Call Charges*, NEWSBYTES, Apr. 6, 1999, *available in* 1999 WL 5121009.

[137] Section 64.604 (c)(3) of the Commission's Rules, 47 C.F.R. § 64.604 (c)(3).

network. In making this decision, we are particularly interested in the availability of alternative methods of CPP-related billing and collection and in the most recent relevant technological developments.

56. We also seek comment on whether or not we should require incumbent LECs to provide the billing information sufficient for a CMRS provider to perform billing and collection, and on whether, even if LEC billing and collection for CPP is not mandated, billing and collection should be provided on a reasonable and nondiscriminatory basis. Assuming that, as a policy matter, we wish to impose any requirement related to CPP billing and collection, we then seek comment on various possible jurisdictional bases.

1. Relationship Between LEC Billing and Collection Services and CPP Offerings

57. The record contains a variety of views on the need for the Commission to mandate LEC billing and collection. A number of wireless carriers who have attempted to offer CPP on a nationwide basis argue that it cannot be implemented without participation of LECs in billing and collection[138] These parties argue that in order for CPP to be economically viable, direct billing by the LEC is necessary.[139] AirTouch, for example, argues that incumbent LECs have significant economies of scale in providing billing services.[140] These commenters also contend that LEC billing and collection must be mandated in order for CPP service to be offered on a nationwide or regional basis, since the absence of a billing and collection agreement in a single LEC service area could prohibit CPP's introduction.[141] Finally, these commenters suggest in the alternative that even if LECs are not required to provide billing and collection services, in order to collect charges for CPP calls, CMRS carriers must be able to obtain the calling party's billing information subject to customary arrangements with telephone companies for reimbursement of costs.[142]

58. On the other hand, some LECs and wireless carriers submit that there is no evidence yet of a strong market demand for CPP, and that the Commission should let the

[138] *See, e.g.*, AirTouch Comments to NOI at 17-18; Omnipoint Comments to NOI at 7; Vanguard Comments to NOI at 2-3.

[139] *Id.*

[140] AirTouch Comments to NOI at 17-18.

[141] *See* Omnipoint Comments to NOI at 8-10; Vanguard Comments to NOI at 2.

[142] *See* Bell Atlantic Comments to CTIA Petition at 4; CTIA Reply Comments to CTIA Petition at 4.

market operate.[143] The commenters opposing requirements for LEC billing and collection also assert that the Commission detariffed third party LEC billing and collection in 1986 with regard to interexchange carriers.[144] To impose new requirements now in the CPP context, it is argued, would unnecessarily re-regulate the billing and collection marketplace. They also submit that there is no Commission requirement for billing and collection provided by LECs and interexchange carriers (IXCs) for other services, such as 900 information services.[145] CTIA maintains that there is currently no need to require LECs to provide CPP billing and collection, and that LECs only have to make available to CMRS carriers the data necessary to bill for CPP.[146] Mandating access to billing data, CTIA asserts, is not tantamount to requiring LEC billing and collection for CPP.[147] Opposing commenters also proffer that alternatives to LEC billing and collection for CPP that entail third party billing through credit card companies, clearinghouses, or utilities obviate the need for mandatory LEC billing and collection.[148]

59. In considering the regulatory treatment of billing and collection services, we observe that we have generally declined to regulate the provision of billing and collection services unless regulation is needed to protect competition. In 1983, shortly after the Modified Final Judgment, the Commission regulated billing and collection services by establishing a separate access charge for billing and collection provided to IXCs and requiring exchange carriers that provided billing and collection services to one IXC to provide such services to all IXCs.[149] In 1986, however, the Commission detariffed billing and collection

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[143] *See, e.g.*, Aliant Comments to NOI at 2-3; BellSouth Comments to NOI at 2; SBC Comments to NOI at 7.

[144] Detariffing of Billing and Collection Services, CC Docket 85-88, Report and Order, 102 FCC 2d 1150, 1170-71 (para. 32) (1986) (*1986 Detariffing Decision*), *recon. denied*, 1 FCC Rcd 445 (1986).

[145] Bell Atlantic Comments to NOI at 9; USTA Reply Comments to NOI at 6 & n.21 (citing Audio Communications, Inc. Petition for Declaratory Ruling that the 900 Service Guidelines of US Sprint Communications Co. Violate Sections 201(a) and 202(a) of the Communications Act, Memorandum Opinion and Order, 8 FCC Rcd 8697, 8699-8700 (paras. 13-24) (Com. Car. Bur. 1993) (citing AT&T Dial-It Services and Third Party Billing and Collection Services, File No. ENF 88-05, Memorandum Opinion and Order, 4 FCC Rcd 3429, 3433 (paras. 32-38) (1989) (finding that billing and collection for 900 services was not common carriage)).

[146] *See* CTIA Reply Comments to NOI at 5-6; CTIA Reply Comments to CTIA Petition at 4.

[147] CTIA Reply Comments to NOI at 6.

[148] BellSouth Reply Comments to CTIA Petition at 6; SBC Reply Comments to NOI at 16-17.

[149] MTS and WATS Market Structure, CC Docket No. 78-72, Phase I, 93 FCC 2d 241, 313-14 (paras. 137-141) (1983).

services provided by LECs and found regulation of such services to be unnecessary.[150] In 1992, the Commission clarified that billing and collection service was a communications service within the meaning of Section 3(a) of the Act,[151] but that it was not subject to regulation under Title II because it was not a "common carrier" service (although it could be regulated under the Commission's ancillary jurisdiction under Title I of the Act).[152] In 1993, the Commission refused to require IXCs to provide billing and collection services to providers of 900 services.[153]

60. In some instances where the provision of billing and collection services has not been required, there have been nondiscrimination requirements. For instance, in the 1996 Telecommunications Act, Congress added Section 272[154] requiring Bell Operating Companies (BOCs) who wished to provide certain types of services to provide them through separate affiliates. Section 272(c)(1) of the Act provides that BOCs may not discriminate between such affiliates and "any other entity in the provision or procurement of goods, services, facilities, and information, or in the establishment of standards. . . ."[155] In implementing that section, we held that to the extent a BOC provides billing and collection services to an affiliate, such services were subject to the non-discrimination requirements of Section 272(c)(1).[156] We also defined the term "entity" as including "telecommunications carriers, ISPs, and manufacturers."[157]

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[150] *1986 Detariffing Decision*, 102 FCC 2d at 1167-1171 (paras. 20-25).

[151] 47 U.S.C. § 3(a) (current version at 47 U.S.C. § 3(51) (1996)).

[152] *See* Policies and Rules Concerning Local Exchange Carrier Validation and Billing Information for Joint Use Calling Cards, CC Docket No. 91-115, Report and Order and Request for Supplemental Comment, 7 FCC Rcd 3528, 3532-33 n.50 (para. 26) (1992) (finding that billing and collection was incidental to the transmission of "wire communication" and is thus properly considered a communications service). The Commission did rule that validation and screening services were subject to regulation under Title II because "only the LECs can provide validation and screening data in its original, accurate, and up-to-date form." *Id.* at 3532 (para. 26).

[153] Audio Communications, Inc. Petition for a Declaratory Ruling That the 900 Service Guidelines of US Sprint Communications Co. Violate Sections 201(a) and 202(a) of the Communications Act, Memorandum Opinion and Order, 8 FCC Rcd 8697 (1993). The Commission noted that while the 900 providers petitioned for services from IXCs, they were actually desiring access to LEC billing and collection. *Id.* at 8700 (para. 21).

[154] 47 U.S.C. § 272(a).

[155] 47 U.S.C. § 272(c)(1).

[156] Implementation of the Non-Accounting Safeguards of Sections 271 and 272 of the Communications Act of 1934, as amended, CC Docket No. 96-149, First Report and Order and Further Notice of Proposed Rulemaking, 11 FCC Rcd 21905, 22007-08 (paras. 216-219) (1996).

[157] *Id.* at 22008 (para. 219).

61. At this point, the record is not sufficient to decide, as a policy matter, whether we should require CPP-related LEC billing and collection. We seek comment on whether such billing and collection is needed for the regional or nationwide offering of CPP, and, if so, whether that need reflects market failure or some anticompetitive conduct. In addition, we ask whether the offering of CPP would be cost-prohibitive in the absence of incumbent LEC billing and collection services. We also seek specific comment on the availability of alternatives, such as third party billing through credit card companies or clearinghouses. Moreover, there likely have been technological developments in intelligent network (IN)-type platforms and new billing software programs available to CMRS providers since the closing of the record in this proceeding. These developments may make it more cost-effective for CMRS providers to perform their own billing and collection, if provided the necessary billing information from the ILEC, or make it feasible for competitive local exchange carriers (CLECs) and rural LECs to provide or phase-in CPP billing and collection.[158] We also note that with technological developments, CMRS carriers interested in providing a CPP service option may want to develop their own capabilities to rate and record billing information, with LECs making use of that information if the LECs were to bill LEC customers directly. We therefore seek comment on these developments and their impact on implementing CPP, particularly in regard to LEC billing and collection, third party billing, and CMRS carrier billing.

62. We also seek comment on whether we should mandate that LECs provide to CMRS providers billing information sufficient for the CMRS provider or third parties to bill calling parties for CPP-related calls, or that LECs provide any CPP-related billing and collection on a nondiscriminatory basis.

63. Finally, we seek comment on whether calls placed through TRS facilities, including those from pay telephones, or calls between two TTYs, implicate any additional billing and collection issues that may need to be addressed in this proceeding. Commenters are requested to be as specific as possible about the nature of the TRS and/or TTY related problems in billing and collection and should propose solutions. We also solicit comment on any other problems or issues that may affect consumers, including those with disabilities, if CPP were to be implemented on a broader scale by wireless carriers in the United States.

[158] For example, IN platforms may include various functions or components for CPP, such as Line Information Database (LIDB), calling party notification, and confirmation of the ability to bill the calling party's local calling number. CMRS providers may have their own IN functionality or obtain them from a LEC or third party provider. *See* Omnipoint Comments to NOI at 8-9 (arguing that LECs should be required to unbundle billing and collection services from offering of IN components or functionalities).

2. Potential Jurisdictional Bases for Commission Action

64. Assuming that we conclude in this proceeding as a policy matter that we should require the provision of LEC billing and collection for CPP in the U.S., we seek comment concerning our statutory authority to promulgate such a requirement. Specifically, we seek comment on several potential sources of jurisdiction raised by the commenters in response to the *Notice of Inquiry*.

65. Some commenters, such as AirTouch, argue that we have ancillary jurisdiction pursuant to Sections 4(i) and 303(r) of the Act[159] to mandate LEC billing and collection for CPP.[160] AirTouch points out that when the Commission detariffed LEC billing and collection services in 1986, it nevertheless noted that it retained ancillary jurisdiction over such services.[161] AirTouch contends that the exercise of jurisdiction over LEC billing and collection in the CPP context would further the statutory objectives of the Communications Act.[162] We seek comment on whether the statutory objectives of the Act support the assertion of ancillary jurisdiction here,[163] and on AirTouch's contentions that the exercise of jurisdiction over LEC billing and collection in the CPP context is distinguishable from other instances where the Commission has declined to exercise ancillary jurisdiction over LEC billing and collection. Finally, we seek comment on whether other provisions of the Act, such as Section 332,[164] provide an independent jurisdictional basis for a federal requirement regarding CPP-related billing and collection.

66. We also seek comment on whether we have jurisdiction under any of the theories described above over the provision of billing information by LECs to support CPP-related billing and collection by others. Some commenters argue that in the case of ILECs, we have authority to require the provision of billing information under Section 251(c)(3) of the Act, which requires that ILECs provide nondiscriminatory access to "network elements" on an unbundled basis.[165] These commenters argue that billing and collection information

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[159] *See* 47 U.S.C. §§ 4(i), 303(r).

[160] *See* AirTouch Comments to NOI at 18-21; Vanguard Comments to NOI at 6.

[161] AirTouch Comments to NOI at 18 (citing *1986 Detariffing Decision*, 102 FCC 2d at 1150, 1168 n.47 (para. 32) (1986)).

[162] AirTouch Comments to NOI at 19.

[163] 47 U.S.C. § 4(i).

[164] 47 U.S.C. § 332.

[165] 47 U.S.C. § 251(c)(3).

constitutes a unbundled network element (UNE) that is subject to this statutory requirement.[166] We seek comment on this view, particularly in light of the fact that the definition of "network element" in Section 3(29) of the Act includes "information sufficient for billing and collection."[167] We plan to apply the criteria we develop in the *UNE Second Notice* we initiated as a result of the remand from the Supreme Court's decision in *Iowa Utilities Board* in order to determine whether such information would need to be unbundled under the statutory "necessary" and "impair" standard.[168]

67. Assuming that a LEC is providing CPP-related billing and collection services or information, we also seek comment on whether we have jurisdiction to require that LEC to provide such services or information on a reasonable, non-discriminatory basis. Assuming that we were to determine that CPP-related billing information qualifies as a UNE subject to Section 251(c)(3), the Act requires that incumbent LECs provide nondiscriminatory access to UNEs "on rates, terms, and conditions that are just, reasonable, and nondiscriminatory."[169] In view of this requirement, we seek comment on whether, if an ILEC elects to provide billing and collection for CPP for any CMRS carrier, the ILEC must offer the same services on a reasonable, non-discriminatory basis to all CMRS carriers who request such services.[170] Further, we invite comment on whether we have authority, based on ancillary jurisdiction or any other statutory provisions, to impose similar non-discrimination requirements with respect to CPP-related billing information on incumbent LECs and on non-incumbent LECs, *i.e.*, competitive LECs and LECs serving rural areas, who are not subject to Section 251(c)(3).

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[166] SBC Comments to NOI at 4-5; CTIA Reply Comments to NOI at 5-6.

[167] 47 U. S. C. §153(29).

[168] Implementation of the Local Competition Provisions in the Telecommunications Act of 1996, CC Docket No. 96-98, Second Further Notice of Proposed Rulemaking, FCC 99-70 (released April 16, 1999) (*UNE Second Notice*); AT&T Corp. v. Iowa Utils. Bd., 119 S.Ct. 721 (1999).

[169] 47 USC § 251(c)(3).

[170] We note that in the payphone context, we have imposed a similar nondiscrimination requirement on LECs. *See* Implementation of the Pay Telephone Reclassification and Compensation Provisions of the Telecommunications Act of 1996, CC Docket No. 96-128, Report and Order 11 FCC Rcd 20541, 20616 (para. 149) (1996) (concluding that if a LEC provides basic, tariffed payphone services that will only function with billing and collection services from the LEC, the LEC must provide the billing and collection services it provides to its own payphone operations to independent payphone providers). Also, prior to the 1996 Act, the Commission decided that it would regulate the provision of billing name and address (BNA) information as a common carrier service under Title II to ensure that LECs would provide such information on a nondiscriminatory basis. *See* Policies and Rules Concerning Local Exchange Carrier Validation and Billing Information for Joint Use Calling Cards, CC Docket No. 91-115, Second Report and Order, 8 FCC Rcd 4478, 4483 (para. 20) (1993).

68. Finally, we seek comment on jurisdictional issues relating to state regulation of LEC CPP-related billing and collection. Under Section 332 of the Act, states are preempted from regulating entry by CMRS providers. Similarly, Section 253(a) prohibits any state or local statute or regulation that constitutes a barrier to entry to any telecommunications service provider, although Section 253(b) preserves intact state regulatory authority to "safeguard the rights of consumers."[171] Some commenters contend that if a state were to prohibit LECs from providing billing and collection services in support of CPP, this would effectively preclude CMRS carriers from providing CPP within the state, and would therefore constitute *de facto* entry regulation subject to preemption under Section 332 or a barrier to entry under Section 253.[172] We seek comment on this view. In addition, some commenters point out that the California PUC has recently denied a petition by AirTouch to compel Pacific Bell to provide billing and collection for a CPP trial based on Pacific Bell's tariff for billing and collection of wireless services.[173] The denial was based on language in a California PUC decision that prohibits a LEC from billing its wireline customers at wireless rates for calls placed to wireless phones.[174] We seek comment on whether this decision raises jurisdictional issues that we should address.

E. CPP, Interconnection, and Reciprocal Compensation

69. The *Notice of Inquiry* also sought comment regarding whether the implementation of reciprocal compensation for LEC-CMRS interconnection requirements provides a sufficient market incentive for CMRS carriers not to charge their subscribers for incoming calls.[175] The *Notice of Inquiry* noted that CPP and reciprocal compensation may address a similar issue regarding the means by which a CMRS provider recoups the cost of completing a call that does not originate on the CMRS network.[176] The Commission asked for comment regarding whether reciprocal compensation would eliminate or reduce the need for CPP.

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[171] 47 U.S.C. § 253(a)-(b).

[172] *See* AT&T Wireless Comments to NOI at 6-7; CTIA Comments to NOI at 12-24; GTE Comments to NOI at 18-21; PCIA Comments to NOI at 5-9; Source One Comments to NOI at 7-8; Sprint Spectrum Comments to NOI at 12-16; Vanguard Comments to NOI at 14-17. 47 U.S.C. §§ 253, 332.

[173] AirTouch Cellular v. Pacific Bell, Decision 98-12-086, Case 97-12-044, Cal. Pub. Util. Comm'n (Dec. 17, 1998).

[174] *Id.* at 2.

[175] *NOI*, 12 FCC Rcd at 17695-96 (para. 8).

[176] *Id.* at 17697 (para. 9).

70. A few commenters contend that there is no need for the Commission to undertake any specific actions geared toward facilitating CPP service implementation because compensation is already provided through reciprocal compensation mechanisms.[177] The Rural Telephone Companies assert that because Section 251(b)(5) of the Act requires all LECs to establish reciprocal compensation arrangements with other telecommunications carriers for the transport and termination of traffic,[178] reciprocal compensation ensures CMRS carriers that they are compensated for costs they incur in terminating calls originating on the LEC network to their wireless subscribers by placing the burden of paying termination costs on the LEC rather than on the wireless subscriber.[179] These commenters argue that with such per-call costs of termination recovered from interconnecting carriers, the implementation of CPP service would assess additional charges associated with termination of calls and would result in double recovery by CMRS carriers at the expense of wireline callers.[180] By contrast, GTE adds that reciprocal compensation interconnection arrangements do not obviate the need for CPP because reciprocal compensation is designed only to recoup the cost of transport and switching, it does not provide recovery for investment in plant or for operational costs in running a CMRS network.[181] Similarly, in response to the Rural Telephone Companies, CTIA maintains that CPP is a service distinct from interconnection termination and that the view of the Rural Telephone Companies fails to account for most of the costs associated with providing wireless services, and, in particular, the fixed costs of providing them. These costs, according to CTIA, are recovered through charges to consumers rather than through reciprocal interconnection termination charges.[182]

71. We agree with those parties who contend that, under existing interconnection agreement, compensation for transport and termination generally does not cover the costs of terminating airtime. As a result, we do not believe that the availability of reciprocal compensation renders moot any issues regarding CPP.

72. Some parties contend that, although CPP can be distinguished from and is not the same thing as reciprocal compensation, CPP-like service can be offered by expanding existing

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[177] *See, e.g.*, Rural Telephone Companies' Comments to NOI at 3-5. *See also, NARUC Resolution* at 2 (reciprocal compensation arrangements should have the effect of equalizing the costs of call transfers between wireless and wireline carriers).

[178] 47 U.S.C. § 251(b)(5).

[179] Rural Telephone Companies' Comments to NOI at 3.

[180] *Id.* at 3-4

[181] GTE Comments to NOI at 6, n.4.

[182] CTIA Reply Comments to NOI at 3-4.

interconnection agreements.[183] Sprint Spectrum indicates that implementation of CPP through interconnection agreements is done in Europe and elsewhere.[184] Under these agreements, the caller is billed by the LEC based on published LEC rates for fixed-to-mobile calls. The LEC is solely entitled to the caller's account and has sole responsibility for bad debt. The LEC pays the wireless carrier an interconnection charge to terminate traffic on the wireless network. The interconnection charges are determined either by regulators or negotiated bilaterally by the carriers involved.[185] Under the European model, the wireless carrier for the called party imposes a wireless termination access charge on the LEC, or the wireless carrier originating the call. The LEC or the wireless carrier serving the originating caller may, in turn, bill its customer, the calling party, to recoup the charge (if it so chose). Such implementation of a CPP service would amount to "asymmetrical compensation," such that the symmetrical rates between wireline and wireless carriers for transport and termination under a reciprocal compensation arrangement would not be operative. With the asymmetrical, or non-symmetrical, compensation approach, CMRS carriers would not need to recover their costs with a distinct "airtime" charge for use of the CMRS carriers' network if all of the costs related to completing a call to a wireless phone are included in the "asymmetrical" rate.

73. There are several issues that arise regarding the possible provision of CPP-like services using this approach. First, it is not at all clear that our analysis above regarding the CMRS character of the call and of the rates charged the calling party would be correct. Under this approach, the calling party is legally the customer of the originating carrier, such as the LEC, and pays charges determined by the LEC, not the CMRS carrier. Second, it is not clear how interconnection agreements would need to be changed, and what rule changes would be needed. Third, this approach raises questions about whether CPP offerings would be optional offerings of CMRS providers. The providers in the record have indicated that they intend CPP offerings to be optional offerings for their subscribers, noting that a significant number of their subscribers, such as small businesses, would not want their customers to have to pay CPP-related charges for calling them. Under the interconnection approach, it would appear that there would have to be either: a single, higher rate for all calls to the customers of that CMRS provider (which would result in all calls being CPP-like calls), or a more complex interconnection agreement requiring two different termination rates to the same CMRS provider — one for CPP-like calls, and another, lower rate for other calls. Existing interconnection agreements in many parts of the nation would presumably need to be

[183] Sprint Spectrum Comments to NOI at 9.

[184] See Sprint Spectrum Comments to NOI at 7-8; *see also* S. Zehle, *Calling Party Pays Mobile Tariffing - an International View*, PRODATA-PARTNERS (Apr. 1997).

[185] *Id.*

renegotiated if wireless carriers sought to establish asymmetrical rates for compensation.[186] Fourth, there are questions regarding how to resolve questions of customer notification, and rates to calling parties that potentially would result in answers different from those for CPP offerings.

74. Thus, we invite parties generally to comment on these and any other issues relating to the possible provision of CPP-like service by CMRS carriers wanting to use an interconnection approach. We also seek comment on the impact of such an approach on LECs, including competitive LECs (CLECs), and upon CMRS (such as paging) providers.

V. PROCEDURAL MATTERS

A. Initial Regulatory Flexibility Analysis

75. As required by Section 603 of the Regulatory Flexibility Act of 1980 (RFA),[187] the Commission has prepared an Initial Regulatory Flexibility Analysis (IRFA)[188] of the possible significant economic impact on small entities of the policies and rules proposed in this Notice. We request written public comment on the analysis. In order to fulfill the mandate of the Contract with America Advancement Act of 1996 regarding the Final Regulatory Flexibility Analysis, we ask a number of questions in our IRFA regarding the prevalence of small businesses in the affected industries. Comments must be filed in accordance with the same filing deadlines as comments filed in this proceeding, but they must have a separate and distinct heading designating them as responses to the IRFA.

[186] A number of current reciprocal compensation schemes are being renegotiated in order to bring wireline carriers into compliance with Section 51.703(b) of the Commission's Rules, 47 C.F.R. § 51.703(b). That section prohibits LECs from charging other carriers for LEC traffic that originates on the LEC's network. CMRS carriers have customarily arranged for LECs to charge them, not the calling party, for any local toll charges for calls originating on the LEC network. This payment arrangement is known as "reverse billing." With such renegotiation occurring, some LECs are apparently beginning to bill their customers a separate toll charge for initial wireline access to the wireless network. *See e.g.*, B. Rios, *Calls to Cell Phones May Have Toll*, DETROIT FREE PRESS, Sept. 30, 1998, at F1 (describing LEC charge in Michigan to wireline calling party); *Some Will Pay for Calls from Home to Cell*, INDIANAPOLIS STAR, Oct. 21, 1998, at A14; J. Healey, *New Toll on Calls to Mobile Phones*, SAN JOSE MERCURY NEWS, Jan. 1, 1999, at A1(2).

[187] 5 U.S.C. § 603.

[188] The IRFA is attached as Appendix B.

B. Ex Parte Presentations

76. For purposes of this permit-but-disclose notice and comment rulemaking proceeding, members of the public are advised that *ex parte* presentations are permitted, except during the "Sunshine Agenda" period, provided they are disclosed under the Commission's Rules.[189]

C. Pleading Dates

77. Pursuant to Sections 1.415 and 1.419 of the Commission's Rules,[190] interested parties may file comments on or before August 18, 1999, and reply comments on or before September 8, 1999. Comments and reply comments should be filed in WT Docket No. 97-207. All relevant and timely comments will be considered by the Commission before final action is taken in this proceeding. To file formally, interested parties must file an original and four copies of all comments, reply comments, and supporting comments. If interested parties want each Commissioner to receive a personal copy of their comments, they must file an original plus nine copies. Interested parties should send comments and reply comments to the Office of the Secretary, Federal Communications Commission, 445 12th Street, S.W., Washington, D.C. 20554, with a copy to David Siehl, Policy Division, Wireless Telecommunications Bureau, 445 12th Street, S.W., Washington, D.C. 20554.

78. Comments may also be filed using the Commission's Electronic Comment Filing System (ECFS).[191] Comments filed through the ECFS can be sent as an electronic file via the Internet to <http://www.fcc.gov/e-file/ecfs.html>. Generally, only one copy of an electronic submission must be filed. In completing the transmittal screen, commenters should include their full name, Postal Service mailing address, and a reference to WT Docket No. 97-207. Parties may also submit an electronic comment by Internet E-Mail. To obtain filing instructions for E-Mail comments, commenters should send an e-mail to ecfs@fcc.gov, and should include the following words in the body of the message, "get form <your E-Mail address>."

79. Comments and reply comments will be available for public inspection during regular business hours at the Reference Information Center, Federal Communications Commission, Court Yard Level, 445 12th Street, S.W., Washington, D.C. 20554. Copies of comments and reply comments are available through the Commission's duplicating contractor:

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[189] *See generally* Sections 1.1202, 1.1203, and 1.1206 of the Commission's Rules, 47 C.F.R. §§ 1.1202, 1.1203, 1.1206(a).

[190] 47 C.F.R. §§ 1.415, 1.419.

[191] *See* Electronic Filing of Documents in Rulemaking Proceedings, 63 Fed. Reg. 24,121 (1998).

International Transcription Services, Inc., CY-B400, 445 12th Street, S.W., Washington, D.C. 20554.

D. Further Information

80. For further information concerning this rulemaking proceeding, contact David Siehl or Joseph Levin at (202) 418-1310, TTY at (202) 418-7233, Policy Division, Wireless Telecommunications Bureau, Federal Communications Commission, Washington, D.C. 20554.

VI. ORDERING CLAUSES

81. Accordingly, IT IS ORDERED that the action reflected in the Declaratory Ruling IS TAKEN pursuant to Sections 1, 4(i), and 403 of the Communications Act of 1934, as amended, 47 U.S.C. §§ 151, 154(i), 403, and Section 1.2 of the Commission's Rules, 47 C.F.R. § 1.2.

82. IT IS FURTHER ORDERED that the Declaratory Ruling is effective immediately upon release of this Declaratory Ruling and Notice of Proposed Rulemaking.

83. IT IS FURTHER ORDERED that parties have 30 days from the date of publication of the Declaratory Ruling and Notice of Proposed Rulemaking in the Federal Register to seek review of the Declaratory Ruling.

84. Accordingly, IT IS FURTHER ORDERED that the actions reflected in the Notice of Proposed Rulemaking of this Declaratory Ruling and Notice of Proposed Rulemaking ARE TAKEN pursuant to Sections 1, 4(i), 7, 201, 202, 303(r), and 332 of Communications Act of 1934, as amended, 47 U.S.C. §§ 151, 154(i), 157, 201, 202, 303(r), 332.

85. IT IS FURTHER ORDERED that NOTICE IS HEREBY GIVEN of the proposed regulatory changes described in the Notice of Proposed Rulemaking, and that comment is sought on these proposals.

86. IT IS FURTHER ORDERED that the Commission's Office of Public Affairs, Reference Operations Division, SHALL SEND a copy of this Notice, including the Initial Regulatory Flexibility Analysis, to the Chief Counsel for Advocacy of the Small Business Administration in accordance with Section 603(a) of the Regulatory Flexibility Act of 1980, Pub. L. No. 96-354, 94 Stat. 1164, 5 U.S.C. §§ 601-612 (1980).

FEDERAL COMMUNICATIONS COMMISSION

Magalie Roman Salas

Magalie Roman Salas
Secretary